

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

KAREN JO GROOVER, Personal Representative of  
the Estate of JAMES TOURTELLOTTE, Deceased,

UNPUBLISHED  
January 29, 1999

Plaintiff-Appellant,

v

No. 206229  
Van Buren Circuit Court  
LC No. 96-041696 NO

JOHN WEBER and JOANNE WEBER,

Defendants-Appellees,

and

ALBERT JOSEPH GREENBERG, JR.,

Defendant.

---

Before: Hood, P.J., and Neff and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants John and Joanne Weber.<sup>1</sup> We affirm.

Plaintiff alleged that on May 28, 1995, at defendant John Weber's home, defendant John Weber loaned defendant Albert Joseph Greenberg<sup>2</sup> a shotgun and two shotgun shells. Greenberg then drove to the decedent's residence where Greenberg used the shotgun to fatally wound the decedent. Plaintiff brought suit alleging defendants John Weber and Joanne Weber were negligent in loaning the shotgun to defendant Greenberg. The trial court granted defendants' motion for summary disposition, holding that they did not owe plaintiff's decedent a duty, and that they were not the proximate cause of the decedent's death.

I

Plaintiff's first issue on appeal is that the trial court erred in concluding that defendants did not owe plaintiff's decedent a duty. We disagree.

We review a trial court's grant or denial of a motion for summary disposition de novo. *Hawkins v Mercy Health Services*, 230 Mich App 315, 324; 583 NW2d 725 (1998). The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(8) and (C)(10). However, because the trial court went beyond the pleadings, we will treat the motion as if it were granted pursuant to MCR 2.116(C)(10). *Swan v Wedgewood Family Services*, 230 Mich App 190, 195; 583 NW2d 719 (1998). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court considers all documentary evidence available in a light most favorable to the nonmoving party in order to determine whether there is a genuine issue with respect to any material fact that would warrant a trial. *Swan, supra* at 194-195.

To establish a prima facie case of negligence, the plaintiff must prove: (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached that duty, (3) that the defendant's breach of that duty was a proximate cause of the plaintiff's damages, and (4) that the plaintiff suffered damages. *Id.* at 195. "Duty is any obligation the defendant has to the plaintiff to avoid negligent conduct." *Id.* The question of whether a duty exists is one of law for the court. *Id.* If the court determines as a matter of law that a defendant owed no duty to a plaintiff, summary disposition is appropriate. *Ross v Glaser*, 220 Mich App 183, 186; 559 NW2d 331 (1996).

In *Ross*, this Court noted several considerations underlying the determination of whether a duty exists:

(1) the foreseeability of the harm; (2) the degree of certainty of injury; (3) the closeness of the connection between the conduct and the injury; (4) the moral blame attached to the conduct; (5) the public policy of preventing future harm; and (6) the burdens and consequences of imposing a duty and the resulting liability for breach. [*Id.* at 187.]

Reviewing the applicable factors, we hold that the trial court did not err in finding that defendants did not owe a duty to plaintiff's decedent.

The harm was not foreseeable, nor was there any degree of certainty of injury. Although defendants were aware that defendant Greenberg had been in jail, they did not know him to be a violent person. Nothing in the pleadings alleged that defendants were aware defendant Greenberg had a capability for violent behavior. Although there was a temporal closeness in the connection between the conduct and the injury, no moral blame could be attached to defendants' conduct because at the time they loaned defendant Greenberg a shotgun, they had no reason to believe that he was intent on using it to harm plaintiff's decedent, or anyone else. Greenberg told the defendants that he needed the shotgun to put a suffering animal out of its misery, and there is no indication that they had any reason to disbelieve him. This is not the type of conduct to which moral blame could be attached. Furthermore, we discern no public policy which would be furthered if a duty were imposed on defendants. We agree with the trial court that defendants did not owe a duty to plaintiff's decedent.

## II

Plaintiff next argues that under *Buczowski v McKay*, 441 Mich 96, 490 NW2d 330 (1992), a duty can be imposed based on public policy considerations alone. We disagree.

Plaintiff specifically relies upon the following statements by the Michigan Supreme Court:

Where foreseeability fails as an adequate template for the existence of a duty, recourse must be had to the basic issues of policy underlying the core problem whether the plaintiff's interests are entitled to legal protection against the defendant's conduct. [*Buczowski, supra* at 102 (footnotes omitted).]

Plaintiff's reliance on *Buczowski* is misplaced because, although our Supreme Court relied heavily on public policy considerations, by no means was it the Court's only consideration. See *id.* at 103. Furthermore, as stated above, we do not believe that any public policy would be furthered by imposing a duty upon defendants here.

## III

Because plaintiff cannot establish that defendants owed the decedent a duty, the elements of a negligence action cannot be met. *Swan, supra* at 195. Therefore, we need not consider plaintiff's remaining issue on appeal.

Affirmed.

/s/ Harold Hood

/s/ Janet T. Neff

/s/ Jane E. Markey

<sup>1</sup> The case against defendant Joseph Greenberg, Jr., has been voluntarily dismissed without prejudice. For purposes of this opinion, the word "defendants" will refer solely to John Weber and Joanne Weber.

<sup>2</sup> Joseph Greenberg, Jr. and Joanne Weber are brother and sister.